

things on the ballot last night. Yesterday, the deep blue State of New York—New York, the home of the Senate majority leader—had two of America's signature proposals for weaker elections actually on the ballot as ballot measures. Citizens got to vote directly on whether to open the door to two changes that the politicians wanted: same-day registration and no-excuse absentee voting, on the ballot in New York yesterday.

And as of the latest tally a few minutes ago, both proposals were losing. They currently are both losing about 60/40. Even in deep blue New York, citizens appear to be rejecting the Democrats' demands for weaker elections.

So I think there is only one question left: Where will the Mets and Yankees end up now?

Surely Major League Baseball can't let them stay in New York after this.

I urge a no vote.

Mrs. MURRAY. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mrs. MURRAY. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The VICE PRESIDENT. Without objection, it is so ordered.

CLOTURE MOTION

The VICE PRESIDENT. Pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The senior assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the standing rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to Calendar No. 143, S. 4, a bill to amend the Voting Rights Act of 1965 to revise the criteria for determining which States and political subdivisions are subject to section 4 of the Act, and for other purposes.

Charles E. Schumer, Patrick J. Leahy, Sheldon Whitehouse, Thomas R. Carper, Richard J. Durbin, Catherine Cortez Masto, Margaret Wood Hassan, Raphael Warnock, Gary C. Peters, Patty Murray, Kirsten E. Gillibrand, Jacky Rosen, Elizabeth Warren, Benjamin L. Cardin, Tina Smith, Alex Padilla, Amy Klobuchar.

The VICE PRESIDENT. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the motion to proceed to S. 4, a bill to amend the Voting Rights Act of 1965 to revise the criteria for determining which States and political subdivisions are subject to section 4 of the Act, and for other purposes, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

(Ms. ROSEN assumed the Chair.)

(Ms. BALDWIN assumed the Chair.)

Mr. THUNE. The following Senator is necessarily absent: the Senator from South Dakota (Mr. ROUNDS).

The yeas and nays resulted—yeas 50, nays 49, as follows:

[Rollcall Vote No. 459 Ex.]

YEAS—50

Baldwin	Hickenlooper	Peters
Bennet	Hirono	Reed
Blumenthal	Kaine	Rosen
Booker	Kelly	Sanders
Brown	King	Schatz
Cantwell	Klobuchar	Shaheen
Cardin	Leahy	Sinema
Carper	Lujan	Smith
Casey	Manchin	Stabenow
Coons	Markey	Tester
Cortez Masto	Menendez	Van Hollen
Duckworth	Merkley	Warner
Durbin	Murkowski	Warnock
Feinstein	Murphy	Warren
Gillibrand	Murray	Whitehouse
Hassan	Ossoff	Wyden
Heinrich	Padilla	

NAYS—49

Barrasso	Graham	Risch
Blackburn	Grassley	Romney
Blunt	Hagerty	Rubio
Boozman	Hawley	Sasse
Braun	Hoeven	Schumer
Burr	Hyde-Smith	Scott (FL)
Capito	Inhofe	Scott (SC)
Cassidy	Johnson	Shelby
Collins	Kennedy	Sullivan
Cornyn	Lankford	Thune
Cotton	Lee	Tillis
Cramer	Lummis	Toomey
Crapo	Marshall	Tuberville
Cruz	McConnell	Wicker
Daines	Moran	Young
Ernst	Paul	
Fischer	Portman	

NOT VOTING—1

Rounds

Mr. SCHUMER. I vote no.

The VICE PRESIDENT. On this vote, the yeas are 50, the nays are 49.

Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is not agreed to.

The motion was rejected.

MOTION TO RECONSIDER

Mr. SCHUMER. Madam President, I enter a motion to reconsider the failed cloture vote.

The VICE PRESIDENT. The motion is entered.

MOTION TO DISCHARGE

Mr. SCHUMER. Madam President, pursuant to S. Res. 27, the Committee on the Judiciary being tied on the question of reporting, I move to discharge the Committee on the Judiciary from further consideration of Jennifer Sung, of Oregon, to be United States Circuit Judge for the Ninth Circuit.

The VICE PRESIDENT. Under the provisions of S. Res. 27, there will now be up to 4 hours of debate on the motion, equally divided between the two leaders, or their designees, with no motions, points of order, or amendments in order.

Mr. SCHUMER. I ask for the yeas and nays.

The VICE PRESIDENT. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays are ordered.

Mr. SCHUMER. Madam President, for the information of the Senate, we expect to vote to discharge the nomination to occur following the votes that are scheduled to begin at 5:15 tonight. Therefore, Senators should expect three rollcall votes at 5:15 p.m. These votes will be on the confirmation of the Prieto and Nayak nominations and on the motion to discharge the Sung nomination.

JOHN LEWIS VOTING RIGHTS ADVANCEMENT ACT

Madam President, in reference to what just occurred on the floor in terms of voting rights, this is a low, low point in the history of this body. A few moments ago, Senate Republicans, for the fourth time this year, were presented with a simple question: Will they vote in favor of starting debate—merely a debate—on protecting voting rights in this country?

In today's case, they would join Democrats in proceeding to the John Lewis Voting Rights Advancement Act, which would reinstate longstanding and widely embraced Federal protections on the right to vote.

With just one exception, Republicans once again obstructed the Senate from beginning its process. Given the chance to debate in what is supposed to be the world's greatest deliberative body, Republicans walked away.

Today's obstruction was only the latest in a series of disturbing turns for the Republican Party. For over a half a century, the policies of the Voting Rights Act have commanded bipartisan support in this Chamber. It has been reauthorized five times, including by Presidents Nixon, Reagan, and Bush. Many of my Republican colleagues in office today have worked in the past to improve and approve preclearance provisions similar to the ones contained in today's proposal.

It was good enough for Republicans back then; it should have been good enough for them today. But after today's vote, it is clear that the modern Republican Party has turned its back on protecting voting rights. The party of Lincoln is becoming the party of the Big Lie.

Democrats have laid out the facts for months: we are witnessing at the State level the greatest assault on voting rights since the era of segregation. Before our very eyes, the heirs of Jim Crow are weakening the foundations of our democracy.

And by blocking debate today, Senate Republicans are implicitly endorsing these partisan actions to suppress the vote and unravel our democracy.

We have said all year long that if there is anything worth the Senate's attention, it is protecting our democracy. We have tried for months to get Republicans to agree. We have lobbied Republicans privately. We have gone through regular order. We have attempted to debate them on the floor.

We have presented reasonable, commonsense proposals in June, August, October, and now in November. Each

time, I personally promised my Republican colleagues they would have ample opportunities to voice their concerns, offer germane amendments, and make changes to our proposal.

At no point did we ever ask them to vote for our legislation. We have simply been trying to get our Republican friends to start debating, just as the Senate was intended to do.

On the floor, off the floor, we held public hearings, group discussions with Senators and one-on-one meetings with the other side to try and win some support. Senators MANCHIN, KAINE, TESTER, KING, DURBIN, KLOBUCHAR, LEAHY, and more have all met with Republicans to initiate a dialogue. And at every turn, we have been met with resistance.

The sole exception in 10 months has been our colleague, the Senator from Alaska, who voted in favor of advancing today's legislation. Today, I thank her for working with us in good faith on this bill.

But where is the rest of the party of Lincoln? Down to the last Member, the rest of the Republican conference has refused to engage, refused to debate, and even refused to acknowledge that our country faces a serious threat to democracy.

Madam President, the Senate is better than this. A simple look at our history shows we are better than this. The same institution that passed civil rights legislation, the New Deal, the Great Society, and the bills of Reconstruction should be more than capable of defending voting rights in the modern era.

But, as anyone who has been here more than a few years knows, the gears of the Senate have ossified over the years. The filibuster is used far more today than ever before—by some measures, 10 times as much compared to decades past. Some might wonder if any of the great accomplishments of the past would have a chance of passage today. Would the Social Security Act pass the modern Senate? What about the Medicare and Medicaid acts? What about the Civil Rights Act of 1964? We sure hope they would, but it is difficult to see with the way this Chamber works today.

As I said a few weeks ago, I believe the Senate needs to be restored to its rightful status as the world's greatest deliberative body. It has earned that title precisely because, yes, debate is the central feature of this body, but at the end of the day, so is governing, and so is taking action when needed once the debate has run its due course.

This is an old, old fight in this Chamber. Over 100 years ago, the great Senator of Massachusetts, Henry Cabot Lodge, said: "To vote without debating is perilous, but to debate and never vote is imbecile." Imbecile. "To vote without debating is perilous, but to debate and never vote is imbecile." We should heed those words today and explore whatever path we have to restore the Senate so it does what its Framers

intended: debate, deliberate, compromise, and vote.

We can't be satisfied in this Chamber with thinking that democracy will always win out in the end if we aren't willing to put in the work to defend it. It will require constant vigilance to keep democracy alive in the 21st century.

Madam President, just because Republicans will not join us doesn't mean Democrats will stop fighting. This is too important. We will continue to fight for voting rights and find an alternative path forward, even if it means going at it alone, to defend the most fundamental liberty we have as citizens.

I yield the floor.

The PRESIDING OFFICER (Ms. BALDWIN). The junior Senator from Wyoming.

Ms. LUMMIS. Madam President, I am joining my colleagues today to highlight the real harm that the President's overreaching vaccine mandates are causing the people of Wyoming and the United States.

While I am vaccinated and support others making the decision to get the COVID-19 vaccine to protect themselves, I am very concerned about unacceptable actions by the executive branch to force Americans to get the vaccine. Frankly, I cannot stay silent about these blatant violations of personal freedom.

Over the last several months, the President has signed numerous Executive orders mandating vaccines for Federal workers, contractors, and employers with over 100 workers. This is unacceptable. These mandates are far-reaching and burdensome.

Additionally, these mandates will not achieve the desired results of stopping the spread of COVID-19. Instead, they will only further politicize healthcare choices, sow greater discord across the Nation, and exacerbate our employment crisis. I worry they will also further harm our supply chain issues. All of these should concern every American, particularly with the holiday season rapidly approaching. Consumers are going to face empty shelves in stores, and for what is available, prices will continue to rise.

In the freight industry, these mandates could mean that up to one-third of employees will be leaving their jobs. On Monday, POLITICO noted that several trucking companies are looking to end their work with the Federal Government as the vaccine mandate deadlines loom closer. This doesn't only impact the shipping industry but also our defense and law enforcement sectors as well. Former Deputy Under Secretary for Industrial Policy William Greenwalt noted that "even a couple of welders or engineers who walk off their jobs on a highly classified program could wreak havoc with our national security."

Meanwhile, it is more than a couple of individuals who are looking at leaving. Defense contractor Raytheon says

they expect to lose thousands of employees when the mandate goes into effect.

Finally, I would like to give an example of how this is impacting my home State of Wyoming. Across the Nation, we are facing nursing shortages, but in Wyoming, it is becoming critical. I have heard over and over again from my hospitals, clinics, and nursing homes that they just don't have the staff. Many have left the field, whether due to the strain of COVID-19 or because they believe they can find better work as traveling nurses. This has left our healthcare community shortstaffed.

If we lose additional nurses from these vaccine mandates, my State is looking at losing healthcare capabilities. This means turning away patients and potentially closing nursing homes. These patients, at the end of their lives, frequently have nowhere else to go. If there is no one else to care for them, the healthcare system will be at the end of its rope trying to find ways to care for these patients.

For these reasons, I cannot support these mandates, nor should anyone else. Knowing the damage these mandates will cause, the President must immediately rescind these Executive orders and find a better way to keep our Nation safe.

The PRESIDING OFFICER. The junior Senator from Indiana.

Mr. BRAUN. We are here today because of the vaccine mandate. When I got back home over the break, I never had so many friends and fellow business owners who actually made it a point to find me and tell me that this can't be happening.

With the full navigation that we have taken through COVID, I have always been clear: Take it seriously. We don't know how this is going to end up.

It has been over a year and a half. The point back in Indiana is that most businesses, schools, all organizations have put protocols in place to where it has not been an issue. It has been a nonissue of, really, transmissions within the workplace.

We finally get through it, we found the rhythm of what works, and now you have a mandate that says: Hey, Federal employees, Federal contractors—they contacted me too. Some think they will lose 10 to 25 percent of their workforce. Businesses are in the same place.

When you look at what we have done, where we are, it just does not make sense. That is why I am leading the Congressional Review Act effort to try to get all Senators on my side—some on the other side of the aisle—to say: Hey, we don't need it. Enough is enough.

Look at the practical reasons because businesses and other organizations have tried and they have been successful at keeping their employees and their customers safe and healthy. This is coming at a point in time where it is going to be salt in the wound. It

will be the biggest wallop these entities have had, especially when we have been paying them to keep their employees, up to 500 employees. Now we are going to force them to lose them en masse down to 100. It doesn't make sense. That is why I am glad I am leading the effort and glad other Senators are here talking about it.

Please pull back on something that is beyond the pale, that we don't need, and that is going to hurt the places we have been trying to help.

I yield to the Senator from Florida.

The PRESIDING OFFICER. The junior Senator from Florida.

Mr. SCOTT of Florida. Madam President, in December, President Biden promised he would not require Americans to be vaccinated or require that they carry vaccine passports. Less than 10 months into his Presidency, I think he must have forgotten what he said, breaking promise after promise and going back on his word. How can the American people believe anything he says?

Americans are sick and tired of the government telling them what to do and are more than capable of making the right choices to protect themselves, their families, and their neighbors. But now, because King Biden has gone back on his word or forgotten what he said, millions of Americans are facing an ultimatum: Get the vaccine or lose your job. For companies, it is either make your employees get the jab or lose your Federal contract.

This is a complete overreach of power. Biden wants to control our lives and make the government be the authority in every area of your life. Nowhere in the Constitution does it say that Biden has this power—nowhere.

Listen, I had COVID. I am grateful that I was able to get vaccinated. I hope that all Americans talk with their doctors and consider making the same decision. It is a personal decision every individual gets to make, but that is not how President Biden sees it. That is why I introduced multiple pieces of legislation to push back on these unconstitutional vaccine mandates.

I have introduced the Freedom to Fly Act to prohibit the TSA from requiring Americans to show proof of vaccine or produce a vaccine passport and protect the privacy of American families. I don't believe that the Federal Government has any business requiring travelers to turn over their personal medical information to catch a flight.

I introduced the Stop Mandating Additional Requirements for Travel Act to prohibit the feds from requiring Americans to wear masks on public transportation like Amtrak or on airplanes.

I also introduced the Prevent Unconstitutional Vaccine Mandates for Interstate Commerce Act, which would prevent Federal Agencies like the Department of Transportation from requiring proof of vaccination for companies trying to do business across State lines.

Last month, I introduced legislation to prevent vaccine mandates from being tied to a few of our Federal assistance programs, like Medicare, Social Security, food stamps, and public housing. I hoped everyone in this Chamber would have agreed that we shouldn't force struggling American families to choose between Social Security disability checks and a personal health decision.

Most Americans would be shocked if a politician said it is acceptable to deny someone health insurance or food stamps simply because of their vaccine status. Sadly, Madam President, this is exactly what happened on this floor last month. All I did was request that Americans, regardless of vaccine status, should be able to access a few of our most essential government programs. My Democratic colleagues disagreed every time. The Democratic Party leaves no room for disagreement. They leave no room for compromise. I think it is shameful.

But unlike Joe Biden and Democrats in Washington, I don't believe that government knows better than the American people. My parents didn't have much of a formal education, but they worked hard and made the choices they felt were right for the health and well-being of our family.

As Biden tries to control the lives of every American family, our economy is suffering. Inflation is already skyrocketing, and these vaccine mandates are going to add to it.

Only weeks ago, the Federal Reserve published its latest Beige Book report. In the report, the Fed found that vaccine mandates were widely cited by businesses as a reason for low labor supply and hiring and retention issues. The Federal Reserve admitted what I have been warning about for weeks: Joe Biden's unconstitutional vaccine mandates are causing higher turnover, driving Americans out of their jobs, and further fueling the devastating supply chain and inflation crisis plaguing American families.

When I think about the impact of vaccine mandates, I think about my dad. My dad was a truckdriver. Anyone who has driven trucks or has been close to someone in that line of work knows how demanding the job can be. There is already a driver shortage in this country, and we can't afford to lose any more due to unconstitutional vaccine mandates.

Consider first responders. Dozens of Massachusetts State troopers are threatening to resign over vaccine mandates. Los Angeles County could lose up to 10 percent of its police force. Chicago may see up to 50 percent of its police refusing to comply with vaccine mandates. Seattle is preparing for a mass exodus of officers in the coming weeks due to people who are quitting over vaccine mandates.

For the past several months, we have been seeing rises in violent crime and problems in retaining police officers. We should not add to that ongoing

problem by forcing police officers to choose between their jobs and taking a vaccine.

I have called on Secretary Raimondo and Secretary Buttigieg to come before the Commerce, Science, and Transportation Committee to explain what they are doing to prevent U.S. supply chains from completely crumbling under Biden's failed policies and mandates. Sadly, I haven't heard a word from them, but I do see them on TV all the time. These people love to get on CNN and be commentators. That is not their job. Their job isn't to just point out a problem; their job is to fix it.

Now, we have all seen the disruption that this virus has caused. Many of us know someone who has fallen extremely ill or who has died because of COVID. That is why I am very appreciative of all of those who have worked so hard to develop the vaccine. But I am 100 percent against these unconstitutional mandates.

Being vaccinated is a decision every American gets to make for himself. It is an authoritarian overreach by King Biden to threaten people with job loss unless they get the vaccine. Think about it. Why on Earth would a President do something they know is going to cost someone their job?

Our job within government is to provide people with good information so they can make informed decisions and help create jobs, not kill them. But we are seeing that everything Joe Biden does makes things worse for families and businesses in Florida and across our great country. It is time he rescinds his proposed unconstitutional vaccine mandate.

I yield the floor to my colleague from Tennessee.

Mrs. BLACKBURN. I thank the Senator from Florida.

Madam President, I ask unanimous consent to enter into a colloquy with my friend Senator MARSHALL.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. BLACKBURN. Madam President, it is no secret that President Biden's COVID-19 vaccine mandates have drawn major opposition here in the Senate. My Republican colleagues and I have introduced multiple pieces of legislation that chip away at the various impractical, unethical, and downright unconstitutional aspects of this latest power grab.

Last week, I introduced the Keeping our COVID-19 Heroes Employed Act, which would pull essential workers out from under these mandates and stop the White House from unilaterally firing them for refusing to submit to a shot. Think about how ludicrous that is. This, of course, is the heart of the issue.

These pieces of legislation are not anti-vaccine. In fact, our opposition isn't about vaccines at all. I have been vaccinated, and I encourage people to talk to their physicians. This is all about the precedent the Biden administration is trying to set; namely, that it

is acceptable for the Federal Government to stand between a patient and their doctor and to overrule science and personal choice in the name of their personal political agenda.

I think my colleague Senator MARSHALL knows a thing or two about preserving the importance of that doctor-patient relationship.

Is that correct, Senator?

Mr. MARSHALL. It is, indeed. Thank you so much, the senior Senator from Tennessee, for asking me about something so near and dear to my heart—the patient-physician relationship.

I just want to start my remarks by saying that I support the vaccine. I support the vaccine, but I also support an individual's right to decide whether he wants the vaccine or not. That is why I think it is so important to have this patient-physician relationship.

I had the duty and the honor to treat thousands of women with a virus. I learned very quickly that the same virus could cause different problems for different patients, and it was based on their previous medical histories and their underlying medical problems as to what my advice might be.

What my concern today is, is that so many of these heroes of yesterday, the COVID-19 heroes of yesterday, are now being treated so poorly. They are being told to get the jab or else lose their jobs. This mandate is going to lead to unemployment. It is going to lead to more inflation and further disrupt our supply chain. I just wish I could paint a face of all of these people from Kansas who are reaching out to me, saying: Please don't make me make this choice between the jab or my job.

I think of the nurses whom I worked with in Liberal, KS, when the ICU was overflowing. I think of the nuclear engineer folks and the union workers at Wolf Creek Nuclear energy who kept our electricity on. I think of those union workers who work for the Department of Defense contracts in the aerospace industry, and now they are being kicked in the face. They are being told that they are no longer essential, that they are no longer heroes.

Senator BLACKBURN, I am supposing there are heroes in Tennessee who are now being forgotten as well.

Mrs. BLACKBURN. Yes, indeed. You are correct, Senator MARSHALL.

As I have said before, Tennessee is a supply chain and logistic State: shipping, transportation, manufacturing. These are things that help form the backbone of our economy, and those industries employ thousands upon thousands of people in our State.

I will tell you, these thousands of people are speaking up, just as you have said they are speaking up in Kansas. Every day, I hear from people who see what is happening on the ground, from small business owners to truck-drivers, and they are sounding the alarm bells. They know that Joe Biden's mandate will destroy their industries. They are just not asking for carve-outs; what they are saying is,

give us a plan A, a plan B, a plan C; give us options.

Senator MARSHALL, I believe you have taken a different approach to pushing back on some of these mandates.

Mr. MARSHALL. Well, thank you Senator. Indeed, there are more options out there. There are, indeed, more tools in the tool shed that we can use. We plan to oppose any efforts to enforce Joe Biden's vaccine mandate with all the other tools at our disposal, including blocking cloture on any continuing resolution in the absence of language protecting Americans from the mandates. In fact, 50 GOP Senators recently supported this as an amendment to the CR in September.

Senator BLACKBURN, I know that you also would be concerned about using any type of future funding to enforce this unconstitutional mandate.

Mrs. BLACKBURN. Yes, indeed, Senator. I am very concerned.

The Biden administration has, indeed, weaponized the U.S. Government against workers who love their jobs, against workers who are trying to earn a living and support their families. We have to stand up and defend them. Think about it. The Biden administration is using taxpayer dollars to implement a program designed to fire the very people we need to repair our supply chains, to bring manufacturing plants back online, and to keep the public safe.

Yes, our law enforcement officers are very concerned about this, but don't take my word for it. Ask some of these law enforcement unions. Ask the Fraternal Order of Police, the National Sheriffs' Association, and the National Border Patrol Council what will happen if these mandates force them to fire their unvaccinated agents and officers. They are waving red flags right now because these mandates aren't just impractical and unethical; they are dangerous. They will take these men and women off the frontlines and send them to the unemployment line and make us vulnerable.

Am I correct on this point, Senator MARSHALL?

Mr. MARSHALL. Senator BLACKBURN, absolutely. I can't agree with you more.

One of the big concerns I have is of our safety as well as our national security. I know that both Tennessee and Kansas have Army and National Guard units, and I have been told that perhaps half of the enlisted soldiers have not had their vaccines yet, and I encourage them to do that. But if they get separated from the military, it is going to leave a huge hole in our national security.

I am also concerned about those Active-Duty soldiers who are now being separated from the military as well for refusing the vaccine, and I am concerned about what is going to happen to their records going forward. I was so discouraged when I found out the White House suggested these soldiers get a dishonorable discharge.

In case you don't know what a "dishonorable discharge" means, you could be treated like a felon. You lose your VA benefits, and you may lose some of your Second Amendment rights and some of your voting rights as well.

Certainly, again, there is the impact on national security in losing thousands of our soldiers.

Senator BLACKBURN, I am sure that you have so many people who are reaching out to you of the COVID-19 heroes of Tennessee. I appreciate your bringing this bill to the floor, and I am so happy and honored to support it.

Mrs. BLACKBURN. Thank you, Senator.

I am appreciative to the Senator from Kansas and to all of my colleagues who have joined me on the floor today to fight this dangerous precedent set by these mandates.

I think it is so vitally important for my colleagues on the other side of the aisle to understand that the American people are not interested in playing chicken with Joe Biden—not at all. This isn't contrarian politics to them; this is a line in the sand between a power-hungry President who wants to strip them of their fundamental rights and get them fired from their jobs.

I yield the floor.

The PRESIDING OFFICER. The junior Senator from Alabama.

Mr. TUBERVILLE. Madam President, during the recent Senate Armed Services Committee hearing, I asked the Secretary of Defense what I thought was a simple question: As the leader of the Department of Defense, was he against dishonorable discharges for members of the military who decided not to get the COVID vaccine. He hemmed and hawed around, but he never answered my question. But, to me, it is simple. The answer should be that we will not dishonorably discharge those who serve honorably.

Our country is defended by the bravest men and women in the world. All raised their hands and pledged their lives to defend our Nation and our way of life. Our servicemembers stand watch while we go to work, while we spend time with our families, and while we enjoy freedoms they vow to protect.

When COVID broke out, our military was there for America. Military members were mobilized in all 50 States to serve as nurses and doctors at hospitals. They drove ambulances and set up food banks. They delivered critical supplies. They worked to keep order. But how does the President thank them for their service? With a dishonorable discharge for deciding not to take the vaccine. That is ridiculous.

Receiving a dishonorable discharge means they will lose all of their veterans' benefits and their pensions. In some States, it is on par with having a felony conviction. That means they lose their ability to vote or to carry a gun, not to mention what it does to their ability to find a new job. A dishonorable discharge is and should continue to be handed down for only the

most reprehensible conduct in the military.

Now, I am for the vaccine. I have taken it, and my family has taken it, and I continue to encourage others to talk about it and talk to their doctors about it. I also respect the chain of command. I know how important it is for soldiers to follow orders. But this vaccine is still new, and I am sure the Department of Defense can look at other ways to manage our force rather than to put a stain on the reputations of the men and women who wanted to serve and have served their country, which brings me to another point about the impact of the Biden administration's vaccine mandates.

When President Biden made his sweeping vaccine mandates, he did so with the hubris or excessive confidence that Americans would just support the policy simply because it was his competent administration that implemented them, but the mandates are shortsighted, they are ill-conceived, and they threaten our national security. Here is how.

First, it creates a false choice for our defense contractors. They are forced to choose between coming to their job and working to support our military or taking a new vaccine that they don't want. Their decision should be between their doctor and their patient.

Second, it puts the important and critical performance of our defensive industry in jeopardy. Alabama alone is home to 5,000 defense contractors. When these firms are unable to perform, our country is at risk.

Third, the guidance for compliance is changed with little or no warning. This moving of regulatory goalposts creates uncertainty and drives up compliance costs, especially for smaller firms that lack large HR departments.

So last week, I called on the Senate Armed Services Committee Chairman JACK REED to schedule a hearing on this issue. I want to hear straight from the small business owners who are struggling to figure out how to comply. We need to know just how disruptions in their ability to complete their work may impact the defense supply chain.

I also want to hear from expert witnesses within the Department of Defense. We need to have a full picture of the current state of vaccine compliance.

If the Senate were to take action on a solution, it is critical that we have all the facts.

I also sent a letter to the President, urging him to reverse course on his Federal contractor mandate.

On Monday, the White House backed down from their arbitrary deadline of December 8, with the announcement of new flexibilities in their guidance. While this step is in the right direction, they haven't gone far enough.

The vaccine mandate is still a compliance burden on small contractors, no matter how flexible the White House tries to make them.

Our workforce still will be unnecessarily impacted and our national security will still be at risk.

So I would encourage the White House to focus on protecting Americans' liberties while pursuing a holistic strategy to combat COVID.

It is time that President Biden recognizes that mandates are not the answer; frank conversations between doctors and patients are the answer.

I yield the floor.

The PRESIDING OFFICER (Mr. HICKENLOOPER). The Senator from Utah.

Mr. LEE. Mr. President, the United States is facing economic challenges that we haven't experienced in this country for decades. The supply chain crunch is leading to backlogged ports, and that, in turn, is spilling over into empty shelves. Inflation is exacting a punishing toll on American families; on their budgets, on their quality of life.

And it is not the well-off families that are being most harmed by it, no. It is those who are least prepared to endure that. It is America's poor and middle class; those who are working hard to survive from day to day, trying to reach that American dream, trying to ascend the economic ladder that the American dream has long enabled.

Now, each of these problems, in its own right, would be a really serious and vexing primary concern for most people and most businesses, even during normal economic times. But these are far from normal economic times.

In fact, when businesses are polled, their primary concern isn't about any of these things. It is the labor shortage. Businesses are struggling to find workers. The Joint Economic Committee Republicans released a report recently explaining that Americans have lost many vital connections to work. Government policies and social pressures are leading to a lower labor force participation rate than at any time in decades.

This trend is worrying not only because work helps Americans put food on the table—and it does, and it is necessary to do that—but also because work often provides a sense of accomplishment and belonging and self-worth. Work is a social good in its own right.

But businesses across the country are struggling to find workers, and that is leading to more of these same problems, leading to higher prices on things that people need to buy. All this is making everything else more complicated, more difficult for America's poor and middle class.

I have spoken to businessowners in Utah, who are closing their doors for days each week because they can't find workers. Some businesses are offering extremely generous salaries and signing bonuses for those who are willing to work. Nonetheless, they are still struggling to find employees.

Now, work is often the primary connection Americans have with peers. Work provides a sense of involvement, taxpayer responsibility, and community with others. Work is also the way

we get things done. It is how we manufacture, farm, mine, and build. Work is a requisite for prosperity at any level, in any form.

Unfortunately, President Biden is making work more difficult and less enticing, increasingly less possible. Raising taxes on Americans gives them less incentive to work, and as the Penn Wharton Budget Model shows, the Democrats' trimmed-down plan would cost almost \$4 trillion over 10 years and cost American taxpayers \$1.5 trillion in new taxes.

Through his unconstitutional and sweeping vaccine mandate, President Biden is forcing countless American workers out of a job and preventing others from joining or rejoining the workforce. This is far from a mere abstract constitutional transgression. This is a constitutional violation that goes far beyond the text of a document that extends deeply into the lives of the American people, especially the poor and the middle class.

I have now heard from over 300 Utahans who are at risk of losing their livelihoods due to this mandate. Their stories are gut-wrenching. Their stories are tragic. Their stories remind me of how indefensible and inexcusable and immoral this vaccine mandate truly is.

These are ordinary, everyday, hard-working Americans who all too often are just trying to make ends meet, put food on the table, provide for their families, and otherwise get by.

Many of them have legitimate medical, moral, or religious objections. Many of them work for employers who have no desire to implement the mandate and who themselves are worried about their ability to keep their businesses open.

Now, I have heard from a number of Utah businesses whose management and ownership have expressed these exact same feelings, and I have heard from Utah workers who have expressed these feelings over and over and over again. Let me tell you about a few people I have heard from who have described this awful situation.

Now, one Utah business in the high-tech space has expressed concern about losing valuable employees due to the mandate. The business that I am referring to at the moment has implemented policies to encourage vaccination and recognizes, of course, the value that vaccination can bring to the workforce. Nonetheless, the businessowners are uncomfortable with making these decisions for their employees.

The business's management said: "We feel strongly that it is not the government's right to require vaccination."

They are absolutely right.

A growing Utah food manufacturer with 350 employees is very worried about the mandate's impact on that company's ability to keep product moving. This business plays an important role in food supply chains in Utah, throughout the Western United States, and throughout the country.

Leaders of this business said: "This mandate is government overreach, is outside the scope and purpose of OSHA, and will have dire consequences on our company and our economy in this extremely tight labor market."

They know that some of their workforce would quit if the mandate were enforced.

Another Utah business is similarly worried. This larger operation's leadership said: "We are in a difficult labor situation. It is a daily struggle to be fully staffed and produce the products our customers expect. Some of our employees have stated they will quit if forced to be vaccinated. Any disruption in our labor force will be critical to our operations, and a disruption in our labor force not only means some of our customers may not receive product they expect, it may mean local, time-sensitive supply would not get processed. That disruption would be devastating."

Now, it is important here that I not be misunderstood. I am against the mandate, but I support the vaccine. I have been vaccinated. I have encouraged others to be vaccinated. These vaccines are helping countless people avoid the harms associated with COVID-19. But this mandate is already doing serious harm to our economy and to people who want the right, the basic human right, to make their own medical decisions.

That is why I, along with my colleague, the Senator from Kansas, Dr. MARSHALL—Senator MARSHALL and I have sent a letter directly to the majority leader, Senator SCHUMER. We have advised him, months before the current spending period ends in December, that we will oppose any funding legislation that enables the enforcement of President Biden's employer vaccine mandate.

It is essential to remember here that Congress, the branch of government most accountable to the people at the most regular intervals, this is where the Constitution places the power of the purse. This is where the Constitution places the power to pass legislation. Congress, not the President, has the authority to decide how Federal funds are spent.

Now, we believe our funds would be misspent in this way or any endeavor that would harm Utahans and Kansans and all Americans, would worsen our difficult economic situation, or would take away fundamental medical freedoms.

This now marks the thirteenth day that I have come to the Senate floor to oppose the mandate. I am going to continue to do so for as long as it takes to beat the mandate. I encourage all of my colleagues to join me in this effort.

And when I say that, I want to be clear. I am not speaking to one side of the aisle or the other. I invite all to join me in this cause. Why? Well, because Americans overwhelmingly—regardless of whether they live in a red State or a blue State or a purple State,

Americans overwhelmingly oppose this mandate.

According to a poll recently reported on in Axios—hardly a rightwing publication—revealed that 14 percent—just 14 percent—of Americans believe that the response to someone not receiving the vaccine should involve them losing their job.

Just 14 percent of Americans agree with President Biden that you should have to choose between keeping your job and getting a vaccine that might go against your religious beliefs or that might worsen a preexisting medical condition that has caused your doctor to advise you to be cautious in getting the vaccine.

These decisions are not those of the President of the United States to make. You see, he doesn't have that power. My copy of the Constitution says that the power to make law rests in this branch of government, the legislative branch, the Congress. And my copy of the Constitution says that he can't make law, which he essentially did when he purported to have and purported to plan to exercise the power unilaterally, acting alone, to require every worker at every employer that has more than 100 employees—more than 99 employees to get the vaccine or be fired.

This isn't right. Deep down, the American people know it isn't right. Deep down they know that this is not a partisan issue. This is an unabashed power grab by the President of the United States. It is not one that is of the sort that the American people will accept kindly.

I have said before, I am not sure I can think of a more egregious example of a President exercising power that is not his own in many decades.

This is, in some ways, reminiscent of President Harry Truman's decision to seize every steel mill in America in order to make sure that the output could be dedicated to the Korean war effort. The American people didn't smile upon that one. Neither did the Supreme Court of the United States, which, within weeks of President Truman's action on April 8, 1952, decided that he didn't have that authority.

Some may ask: Well, if it is so unconstitutional here, why hasn't the Supreme Court acted?

I will tell you why. Because President Biden hasn't had the basic decency to issue an order explaining a basis for his authority and providing a basis for someone to challenge the legitimacy of his authority to order every business with more than 99 employees—to force its entire workforce to get vaccinated. He hasn't had the decency to do that.

Consequently, no one can sue yet. Consequently, employers everywhere with more than 99 employees are forced to guess as to what it would look like. And in the meantime, their lawyers with good reason and their risk management departments and their human resources departments are understand-

ably saying: We don't want to get caught flatfooted, especially because we have been threatened as employers with \$70,000 per day, per person, mounting civil monetary penalties.

This would be crippling to any business.

So what are they doing?

Well, they are getting ahead of it. They are guessing as to what the most extreme version of the OSHA mandate might look like, and then they are exceeding that. And they are already in the process of threatening termination and, in some ways, in some cases, imposing it.

In many cases, they are not even having the decency to fire them. They are, instead, putting them on unpaid administrative leave. This is especially cruel because it renders them completely ineligible for unemployment.

So, Mr. President, I ask you: Is this moral? Is this just?

Setting aside for a moment the question of whether this is constitutional—and I assure you, unequivocally, it is not. But even setting aside that question, is it moral? Is it proper? Is it acceptable to do this to America's poor and middle class?

It is not.

I yield the floor.

THE PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I want to thank Senator LANKFORD for letting me take 3 minutes to honor an Iowan who recently passed away, a former Member of the House of Representatives. And I think there is only one other United States Senator who would know who I am talking about, and this would be Senator SCHUMER, who served with this former Member of Congress from 1981 to 1995.

REMEMBERING NEAL SMITH

Mr. President, I would like to take a moment to pay tribute to former Iowa Congressman Neal Smith, who passed away yesterday at the age of 101.

He was a true public servant. He entered public life for the right reasons and had no interest in self-promotion. He cared about Iowa and tried to do his best for our State, and he did.

Neal Smith was a humble but impressive man. He was a decorated bomber pilot in World War II. After attending Drake University Law School with his wife, Bea, and opening a practice with her, he became active in local government.

In 1958, Neal Smith was elected to the House of Representatives, where he served for 36 years. That is longer than any other Iowan has served in the House of Representatives.

When I was first elected to Congress as the only Republican in the Iowa delegation, Neal Smith forgot about politics and was a mentor to me. I have never forgotten that. I try to follow his example. We worked in a bipartisan way on behalf of the people in Iowa, just as it should be.

I remember Congressman Smith as a real defender of agriculture, small

business, as a great Iowan, and as a good friend.

Barbara and I extend our condolences to his family. They will be in my prayers.

I yield the floor and thank Senator LANKFORD.

Mr. LANKFORD. Mr. President.

The PRESIDING OFFICER. The Senator from Oklahoma.

VACCINES

Mr. LANKFORD. Mr. President, I have a real concern for our economy, for the future of what is happening right now, and a lot of it wraps around the vaccine mandates that are being laid down by President Biden.

On September 9, President Biden had announced: I am losing patience with the American people, and it is time for you to get vaccinated.

And he laid down a rule on every Federal worker, every Federal contractor, everyone in the military, and everyone who is in a private business with 100 employees or more. He created a new mandate.

He literally reached into union shops and changed their collective bargaining agreement unilaterally and said: The President's going to add a new feature in your collective bargaining agreement, and it is going to be that you are going to have a vaccine or you are going to be fired.

He told every police officer; he told every firefighter; he told every doctor, every nurse; he told every member of the military, no matter how many badges they wear or how many decorations they received: You will be fired if you don't follow my instructions.

It didn't matter if they were front-line workers. It didn't matter if they laid their lives on the line all of last year. It didn't matter. He declared to them: You will be fired if you don't follow my instructions.

He made it very, very clear: If you have already had COVID and recovered and have natural immunity, I don't care.

If your personal doctor has told you not to—his perspective in what is coming down is, if the CDC from Washington, DC, says it's OK, it doesn't matter what your personal doctor says.

While he said you can have a religious accommodation, so far, as I checked in with the military services, no one has been given a military or religious accommodation. And across the Federal workforce, I have yet to hear a soul getting a religious accommodation.

The words are: "We are going to pay attention to your local doctor."

The reality has been totally different. And we have pushed in every way possible against this administration, and will continue to do that not because it is unjust, not because, quite frankly, I think the vaccine is the wrong thing to do—I think it is the right thing to do—but the mandate is absolutely the wrong thing to do.

Americans have a lot of different reasons to not take a vaccine. Allow Americans to be Americans.

I have a friend of mine who, by the way, is a liberal Democrat. Yes, I have liberal Democrat friends. He called me and said his son has had long-term COVID. Eight months he has been in recovery from COVID. He does not want to have the vaccine not knowing how his body will react to that. This week, he will lose his job because the President of the United States told him he is losing his patience.

That is not right.

BUILD BACK BETTER AGENDA

Mr. President, on a separate but related subject, we continue to be able to walk toward a \$2 trillion proposal coming down. We hear the House is taking it up even in the next 24 to 48 hours. Of course, we heard that over and over again lately.

There has been a real concern about what is happening in the economy because of rising inflation. Oklahomans are paying \$175 more a month right now for their basic utilities, groceries, and gasoline—\$175 more a month that they are paying because of the rising inflation that has happened this year.

That inflation, you can take it right back to the middle of March, when a \$2 trillion package was passed in this body on a straight partisan vote that everyone on this side of the aisle was saying: Don't do this. This will cause rising inflation.

And it was done anyway.

As simple as I can state it, it was if you add a lot of extra money and you discourage people from working, you will get fewer products and more buyers. It is not hard to be able to see what is going to happen as a result of that.

Larry Summers, who used to be my Democratic colleagues' favorite economist—he was the National Economic Council director to President Obama—has been a very outspoken progressive economist. He wrote in February, challenging this body not to do that \$2 trillion package, saying this:

There is the risk of inflation expectations rising sharply. Stimulus measures of the magnitude contemplated are steps into the unknown. For credibility, they need to be accompanied by clear statements that the consequences will be monitored closely.

At that same time in February, he said:

Based on the proposal that's out there, there will be an individual that normally has \$22,000 worth of normal income in a year that will move to \$30,000 in benefits for the year, and that will cause problems.

And, boy, has it. Employment all over the country has had all kinds of chaotic moments where employers are trying to hire employees and they are making more on benefits than they are at work, and it has caused all sorts of chaos across our economy.

It is interesting, several progressive economists in March of this year, right after the bill passed, made general statements, like: "A relief plan is different than a stimulus."

It doesn't matter. It is not a stimulus. It is a relief plan, so we can spend as much as we want.

This was my favorite—one of the economists came out and said: "The risk of generalized overheating in the goods market appears low . . ."

"The risk of generalized overheating in the goods market appears low . . ." That was the statement of the economists in March of this year.

Yet the reality is, this year, there is a backup at the Port of Long Beach and people can't get supplies all over the country, and exactly what was forecast in February and March is occurring in our economy right now.

Larry Summers again identified it this way. He made the statement:

The pandemic had punched a \$20 billion hole in Americans' monthly wage income [and] Biden [has] proposed filling it with \$100 billion.

He said:

I know the bathtub has been too empty, but one has to think about what the capacity of the bathtub is and how much water we're trying to flow into it.

What do I mean by that?

That \$2 trillion package that was in March caused all the economic issues of this year. It has caused all the inflation, all the challenges in employment across our economy and across our workforce.

It is now being followed up, apparently, by another \$2 trillion proposal that is coming in the coming days. If we had giant inflation with the last one—by the way, with the highest inflation rate since 1982. If we had that inflation from that \$2 trillion package, what is going to happen when you put another \$2 trillion on top of the last \$2 trillion in this economy?

The simple fact is, quoting Larry Summers, we don't know what will happen. We are literally taking "steps into the unknown." But I can tell you, it is not hard to predict.

That is just the economic issues.

As I look at this package—it is hard to be able to look at the package that is being proposed. I have heard quite a few folks back in Oklahoma on the weekend say to me: What all is in this \$2 trillion package that a couple weeks ago was at \$3.5 trillion? Now we hear it is \$2 trillion. What actually is in it?

And I smile at them and say: I am not sure yet. I hear bits and pieces.

To tell you how much it is moving around, last week, when it was released to the public, it was 2,400 pages. By this morning, it was 1,700 pages. But wait. Now this afternoon, it is 2,000 pages long. That is in a week. It has moved from 2,400 pages to 1,700 pages, to 2,000 pages, as the proposal continues to be able to change over and over again.

It is incredibly difficult to be able to track what all is in it, but we can track some things that are in it.

There is a massive hole that is holding for immigration, as we have now seen three different major proposals on immigration on how to be able to give amnesty to the largest number of people. Several have already been knocked down by the Parliamentarian, but it seems to come back again just to try

to find a new way to be able to do amnesty for as many people that are here illegally present in our country as possible. That seems to be a piece of this economic proposal that is out there.

We do know in this proposal that it finds as many ways as possible to be able to fund gaps in Hyde funding.

Now, what is that?

Using Federal dollars to be able to pay for abortions in our country—an agreement that has been in our country since 1976—that we have strong disagreements on a child's life.

I happen to believe that a child is a child is a child, and every child is valuable, no matter how small they are. Many of my colleagues on the other side of the aisle don't believe children are valuable until they can see them. They have to be born before they are valuable. I believe there is no difference in a child in the womb than a child outside the womb other than time.

This bill is full of areas to go around the Hyde rules to start allowing the funding with Federal dollars to pay for the taking of human life.

I am disappointed how obsessed my Democrat colleagues seem to be about finding new ways to pay for the taking of human life of children. That has not been so, even as recently as 2 years ago.

Quite frankly, Senator Biden was outspoken about protecting the Hyde protections. Now, President Biden and this body seem to be focused on how many ways we can increase abortions in America.

There are a lot of energy aspects in this: the new tax on natural gas, where just 5 or 6 years ago, we called the "bridge fuel to the future" to be able to reduce carbon. Now, natural gas is receiving punishment in this in brandnew taxes.

There is a block on production from the Arctic National Wildlife Refuge. Some of my Democratic colleagues celebrate, saying: "We are going to cut off anything from Alaska and protect that region," which is remarkable to me. We are now buying more oil from Russia than we are from Alaska, right now—twice as much, in fact, more oil from Russia than we are from Alaska.

The Arctic National Wildlife Refuge is an area 19.3 million square acres—19.3 million acres. That is about half the size of my home State of Oklahoma. That is an enormously large area. And in that area, there are 2,000 acres that would actually be set aside for oil production. So to put it in perspective, ANWR is half the size of my State of Oklahoma, and the oil production area that will be needed is a third of the size of the airport that I fly out of, the Will Rogers airport in Oklahoma City.

If you took a third of the size of the airport, that is the size of, actually, the oil production area that will be needed in an area half the size of my entire State. Yet that is being blocked in this bill.

We will see the price of energy go up, but we will see a new benefit for electric vehicles that are here. For even very, very wealthy Americans, they will get a benefit of \$12,500 on new luxury vehicles that they want to be able to purchase, as long as they are electric.

There are direct attacks on the school choice in this bill that actually goes after any kind of private institution or faith-based institution. It says that you will get funding for a secular government school for one level, but if you are in a faith-based school, it is a different level or none at all.

If you are in a pre-K program or a childcare program—and in many rural communities all across our State, when you come to Oklahoma, in many rural communities, the pre-K program and the childcare program is run from a local church. Oh, but they won't be allowed to be able to be a provider in this. You have to be a secular provider because religious institutions are being blocked out by this bill.

It does supersize the IRS, though. It adds \$79 billion to the IRS to increase audits—\$79 billion. To give you a perspective of how big that is, the normal IRS budget for a year is \$12 billion. Yet this bill gives an additional \$79 billion to the IRS to be able to increase audits. And if anyone has a belief those audits are only going to connect to people that make \$400,000 or more, I have a bridge to sell you.

I have to tell you, as I read through the bill—and it does take some time, and it is difficult to be able to get through it because it is changing so much—I am amazed at some of the things that are in it that have been slipped through this: \$350 million are sent to unions to provide for electronic voting systems for unions—\$350 million. There are \$4.28 billion being set aside for training activities in industry sectors and occupations for climate resilience. There are whole sections in this bill, as I go through it, that are set aside for specific areas: \$20 million for State, local, and Tribal governments to mitigate online services to the dot-gov internet domain. To be able to help cities go to the dot-gov internet domain, there is \$20 million that is set aside.

And there are some set aside for even some of my colleagues who are here today on the floor: \$49 million carve-out for Native Hawaiian climate resilience programs in the Office of Native Hawaiian Relations.

It depends on the State that you are in and the perspective that you are in, but as I go through this bill and start identifying the programs, I hear broad descriptions of different programs, and I hear all these different sales of what is in it. But when you read through the bill, when you go through the details of the bill, this is the kind of stuff that you find.

Oh, by the way, one last piece in this ever-changing bill, just within the last hour and a half, they have added a new section of the bill over in the House

side. It is a bill dealing with State and local tax deductions that will help the wealthiest Americans get a bigger tax cut. Yes, I did say that correctly. Currently, for Americans who are in high-taxed States, they can only deduct \$10,000 of their State and local taxes, only \$10,000 off their State and local taxes that they can actually deduct from their Federal tax.

The new proposal that just came out in the last hour from the House of Representatives increases that to \$72,500 in deductions off your State and local taxes. That will be a great tax benefit to the wealthiest Americans—\$72,500.

All that we are asking is, Show us what the real bill is. Let Americans be able to see the real bill. Have the transparency and the ability to be able to actually track through what this will mean day to day, what this will mean to our economy, because we have seen what \$2 trillion did to our economy this March—what is another \$2 trillion going to mean on top of all of that coming up this fall?

I think we are walking into the unknown, except this time, I think we do know what is about to happen to our economy. We need to see this bill and stop this bill before it damages our economy even more than we have already been damaged.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Ms. KLOBUCHAR. Mr. President, I look forward to responding to my colleague in the future, but I can tell you that people I know around the country want to see their costs go down, and that is exactly what this bill is about. It is about bringing families' costs down, from childcare to taking care of loved ones; seniors; to bring down the cost of prescription drugs—something that has eluded our colleagues on the other side of the aisle, despite a lot of claims that they would do something about it.

So we look forward to debating this bill and getting it done.

AMERICAN INNOVATION AND CHOICE ONLINE ACT

Mr. President, I come to the floor today to speak on behalf of a very important piece of new legislation that is bipartisan.

I introduced this bill, the American Innovation and Choice Online Act, in the last month with Senator GRASSLEY, who was here with us today and will be here shortly; as well as my colleagues Senator DURBIN, the chair of the Judiciary Committee; Senator LINDSEY GRAHAM, the former chair of the Judiciary Committee; RICHARD BLUMENTHAL, who is here with us today; Senator JOHN KENNEDY of Louisiana; Senator CORY BOOKER; Senator JOSH HAWLEY; Senator CYNTHIA LUMMIS; and Senator MAZIE HIRONO, who is here with us today; as well as Senator MARK WARNER.

America has a major monopoly power problem, and nowhere is this more obvious than with tech. It is because, in part, it is 20 percent of our economy.

And while we love the new jobs, the new ideas, the new technology that have come out, we all know that you can't just do nothing on privacy, do nothing on competition, and that our competition laws haven't been updated in any serious way since the invention of the internet.

I am here, again, joined with Senator GRASSLEY. I am going to let him go ahead of me and then turn to Senator BLUMENTHAL and Senator HIRONO, and I will finish up because they have been very patient.

I so appreciate Senator GRASSLEY's leadership in this area; one, to make sure the FTC and the Department of Justice Antitrust have the funding they need with the bill that we passed through this Chamber to update merger fees, as well as the work that we are doing right now. It is so important on self-preferencing.

It is this simple: Companies, just because they are dominant platforms, shouldn't be able to put their own stuff in front of everyone else that advertises on our platform. They shouldn't be able to steal ideas and data and develop products off the people who are simply trying to advertise their products on the platform and develop knockoffs, which is exactly what we know, from some really good reporting from the Wall Street Journal and others, has been happening.

And they shouldn't be able to, because they are dominant platforms, tell people who advertise: Hey, if you want to get your stuff near the top of the search engine, then you are going to have to buy a whole bunch of things from us.

That is what reunites us on this bill, the simple concept of competition.

I turn it over to my friend, my neighbor from the State of Iowa, Senator GRASSLEY.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, it was a pleasure to work on this legislation with Senator KLOBUCHAR, so we joined forces—it happens to turn out that there are 10 of our Senate colleagues—in a bipartisan way to introduce this legislation that we call the American Innovation and Choice Online Act.

This bill has garnered support from all sides of the political spectrum and, of course, is a very commonsense measure, which is meant to increase competition on dominant digital platforms.

Today, there are only a handful of dominant companies that control what Americans can buy, what they hear, and what they say online.

Big Tech has powers over the economy that we haven't seen in generations or perhaps ever, and this power grows even larger, taking over yet more of our daily lives. With this power, Big Tech is able to pick winners and losers on their platforms.

The goal of the American Innovation and Choice Online Act is to ensure that Big Tech can be held accountable when

they engage in a discriminatory and anticompetitive manner.

This legislation sets clear rules that businesses on dominant platforms must follow. This will help promote competition by targeting harmful conduct, while ensuring that innovation and pro-consumer conduct is protected.

I want to be clear. Big Tech platforms offer great products to their consumers. This isn't about breaking up companies or penalizing them for being successful. This is about ensuring that small businesses have a fair and even playing field when utilizing a dominant online platform.

I also want to address many of the falsehoods that have been spread by the opponents of this legislation. Nothing in this bill will require a company to shut down their marketplace or prevent those companies from selling their own branded politics.

Also, nothing prevents a search company from showing maps or answer boxes in their search results. And, also, cellular phones can be sold with preinstalled apps. This bill simply sets clear, effective rules to protect competition and users doing business on dominant online platforms.

I am a strong believer in the free market. The United States is still the greatest country in the world for starting and growing businesses. But Big Tech is making it more difficult for small businesses to realize success on these dominant platforms. So with this legislation, Congress must update our laws to keep up with the growing and evolving online ecosystem.

Big Tech has the power to determine when and what we can buy, see, and say online. Big Tech also has the power to destroy companies, small and large, by denying them access to consumers and even to the internet itself.

It is time that we ensure there is effective antitrust enforcement so the American people can take the power back from these Big Tech giants.

I want to again thank Senator KLOBUCHAR for her work with me on this legislation. I also want to thank all of my colleagues from both sides of the aisle who have joined in cosponsoring this legislation.

In the House of Representatives, we have Congressmen CICILLINE and BUCK, who introduced a similar bill earlier this year, which has already been marked up and passed out of the House Judiciary Committee.

The American Innovation and Choice Online Act is a bipartisan, bicameral bill, and I hope that we can move it forward so we end up bringing real, positive change to the benefit of all Americans.

I yield the floor and thank Senator KLOBUCHAR once again.

Ms. KLOBUCHAR. Mr. President, I thank Senator GRASSLEY for his leadership in working with colleagues, and I am glad he mentioned Representatives CICILLINE and BUCK. They are quite the bipartisan duo. But, then, we worked with them to make some changes to

this legislation in order to bring it to our colleagues, and we are very proud of the work we have done. We think it is going to make a big, big difference.

With that, I will turn it over to Senator HIRONO.

The PRESIDING OFFICER. The Senator from Hawaii.

BUILD BACK BETTER AGENDA

Ms. HIRONO. Mr. President, before turning to the bipartisan bill that brings a number of us to the floor this afternoon, we have been listening to a number of my Republican colleagues throw stones at Build Back Better, and I would like to simply state for the record that Democrats are committed to lowering costs for families, such as making childcare more affordable, and home care for seniors. Democrats are committed to lowering taxes for people, such as the child tax credit that, by the way, provides much needed financial support for families, including for the families of over 200,000 children in Hawaii alone—all by making the richest people in our country, who got the benefit of \$1.5 trillion in totally unnecessary tax cuts that the Republicans pushed through—by making the richest people in our country pay for these much needed programs and actually support American families.

Meanwhile, what are the Republicans doing? Nothing. Zero. Nothing for American families. So I would like to set the record straight as to who actually is working hard to help American families, and, believe me, it is not the Republicans.

AMERICAN INNOVATION AND CHOICE ONLINE ACT

Mr. President, turning to the bill that we are talking about today, today's big tech behemoths like to tout their claimed consumer-focused approaches—Amazon, with its ability to deliver seemingly any product to your doorstep within 2 days; Google, with its goal of organizing the world's information and making it accessible to all; Apple, with its mission of bringing the best personal computing products and support to the end user; and Facebook, looking to give users the power to build communities and bring the world closer together. Each claims that their success has been the direct result of their consumer focus, that consumers choose their products and services because they are the best in class.

That may have been true at some point, but it is certainly not true today. Today, consumers have no real choice. Amazon, Google, Apple, and Facebook have become gatekeepers that too often limit, if not outright squash, competition online. The result is unprecedented market domination that allows these small handful of giant companies to influence the choices and actions of literally billions of people every day.

Think about how many times each of us goes on Google. Multiply that by the billions every day. That is the kind of influence these large companies have.

Take Amazon. Just yesterday, the Judiciary Committee heard from a small business owner who sells his Crazy Aaron's Thinking Putty on Amazon's dominant online marketplace. He watched as Amazon leveraged its dominance by using the data it collects from these sales to introduce a knockoff of his product. This is consistent with reporting from Reuters and others that Amazon recruits small businesses to its marketplace and then systematically uses the seller data it collects to develop competing products and preferences those products by placing them at the top of its search results.

Google uses similar tactics to preference its own products and services. The company controls over 90 percent of the search market—90 percent. That might not be such a big deal if Google simply fulfilled the promise of its co-founder, Larry Page, to “get you out of Google and to the right place as fast as possible,” but that simply isn't the case anymore. About two-thirds of searches on Google result in zero clicks; in other words, they start on Google, and they end on Google. That means, for example, that more and more diners looking for the best restaurants don't get directed to Yelp, the site Google's own search criteria identifies as best; rather, they get Google's inferior reviews. It means that travelers looking for travel deals on the top tourist attractions don't get sent to Expedia or TripAdvisor; they are stuck with Google. This is becoming the case for more and more searches.

Apple, likewise, uses its complete control over the iPhone and iOS operating system to give its product a leg up. The company has introduced a number of products, including Apple Music, AirTags, and others, to compete with third-party products—except it is really no competition at all because Apple pushes those third parties into its payment system and then charges a tax of up to 30 percent. Sure, consumers can still use Spotify or Tile, but they all have to pay more to do so. In either case, Apple wins.

These companies have made clear time and again that they are not interested in competing on a level playing field; instead, they are determined to totally control the playing field. Unless the Federal Government steps in, they will continue to do whatever it takes to hold on to their market dominance, competition be damned.

This isn't good for consumers. That is why I cosponsored the American Innovation and Choice Online Act. The bill will put an end to these abusive and anti-competitive practices. Among other things, it will outlaw self-preferencing by the dominant online platforms, prevent these platforms from using a competitor's data to compete against them, and ban the biasing

of search results to benefit the company's own products. Unlike the words of the big tech behemoths, the American Innovation and Choice Online Act isn't an empty promise; it will actually put consumers first by restoring competition in the online marketplace.

Thank you, Mr. President.

I yield to my colleague Senator BLUMENTHAL.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. BLUMENTHAL. Mr. President, I thank my colleague from Hawaii for that very powerful explanation for why we are here today, and I thank Senator KLOBUCHAR for her incredibly important and impactful leadership in this area as the chairman of the Subcommittee on Antitrust of the Judiciary Committee. She has led informative and profoundly significant hearings, and now she has brought to the floor, with many of us as cosponsors, along with Senator GRASSLEY, this major piece of legislation, the American Innovation and Choice Online Act.

I will just begin by restating what a number of my colleagues have said. These complaints about inflation are really totally misplaced as applied to the Build Back Better legislation. In fact, the Build Back Better legislation will drive down costs for Americans, make childcare affordable and accessible, make preschool free and universal for all Americans, and lower the cost of prescription drugs—for the first time, a major piece of legislation to lower the cost of prescription drugs for Americans and lower costs, as well, for energy and housing. The ripple effects of these major steps in reducing costs for everyday Americans will be profound and enduring.

To my colleagues who say on the floor today that this bill is changing or complex, yes, it is complex because it is big and impactful in lowering costs. And, yes, we have listened to Americans in making improvements to the bill, and we will continue to listen to Americans.

Now, inflation also is tied to the bill that is before us, the American Innovation and Choice Online Act. Competition is the lifeblood of our economy. Competition is the way that prices are kept competitive in benefits to consumers. Competition among businesses is the key.

Today, in our digital marketplaces, Big Tech in effect controls access to consumers.

Go back to an earlier time in our country's history. After the Civil War, we saw railroad tycoons use their monopolies to favor big, repeat businesses, with costs to average Americans. They imposed discriminatory terms on farmers and other businesses that needed access to the rails in order to get their products to the public. The American people wanted to do something about it. Congress did. In 1887, Congress responded by passing the Interstate Commerce Act, which stopped railroad monopolies from offering less favorable

terms to smaller businesses and farmers.

The analogy is not completely exact because we are dealing now with Big Tech, but the principle is the same. Think of it as the big tech companies controlling the means of delivery of goods and services. They are the modern-day railroads. In our digital markets, they are dominant gatekeepers with total control of essential online platforms. But, even worse, they have another role as marketers of their own products on those platforms. In other words, big tech companies own the railroads of our digital economy, but they also compete with the economies relying on those railroads to get their products to consumers.

Just a couple of weeks ago, in the Commerce Committee, the Subcommittee on Consumer Protection, which I chair, a whistleblower from Facebook described, to the disgust and dismay of most Americans, how Big Tech is pushing disruptive and toxic content on children and how they know it and profit from it and, in fact, know from their own research and studies what the effects are of online bullying and eating disorders and other harms that are conveyed.

Americans asked me, as they did many of my colleagues: What are you going to do about it?

There are solutions—on privacy, on tools for parents, on other means of holding Big Tech accountable—and one of them is to make sure that antitrust laws are enforced and approved so that there are competing apps that offer safer means of reaching children and other consumers.

Now, the app market is a place where these harms to consumers and competition are starker than anywhere else. The mobile app market has grown into a significant part of the digital economy. In 2020 alone, U.S. consumers spent nearly \$33 billion in mobile app stores, downloading 13.4 billion apps.

We are all dependent on our phones as our gateway to our work, our social lives, and education. But two companies, Apple and Google, dictate the terms of this important market. They do it exclusively. Yet they have those dual roles: first as gatekeepers of the dominant mobile operating systems and their app stores; and, second, as participants on those app stores.

And as with the railroad tycoons, Apple and Google abuse that gatekeeper status to preference themselves and their business partners, driving up their own profits—and consumers' costs—while shutting down competition and stifling innovation. Higher costs, less innovation means consumers are deprived of the benefits of competition.

As with the railroads, Congress needs to ensure that new entrants and smaller companies can compete on fair terms. Today's digital tycoons need new rules of the road that will protect other businesses, like laws protected small farmers and small businesses

against the railroad tycoons. And these rules of the road need to address the anti-competitive discrimination that is self-preferencing across our app economy.

I have heard from app developers who have been unable to tell their own customers about lower prices, unable to inform their own customers about better prices from app developers whose ideas have been co-opted by Apple and Google under their “kill” or “copy” strategy and who are knee-capped by the onerous 30-percent rent fees that are charged to them. And if app developers don’t like the term, there is simply nowhere else for them to go.

So I am indebted to Senator KLOBUCHAR and Senator BLACKBURN for co-authoring another bill with me. In August, I was proud to introduce the Open App Markets Act, which would address anti-competitive discrimination and self-preferencing.

I believe that it is critical that we pass that bill, as well as this one, to set fair, clear, and enforceable rules to protect competition and consumers within the app market.

Like in the app market, there are central gatekeepers in our digital markets with enormous power and deep conflicts of interest. Amazon alone, for example, controls as much as 70 percent of all United States online marketplace sales. If you are a third-party business: Amazon can stop you from contacting your own consumers; Amazon can rank its own products ahead of you in search; Amazon can make sure that when a consumer asks Alexa to buy a particular product, the consumer receives Amazon products; Amazon can use its asymmetric access to data to engage in a copy and kill strategy. It can replicate your successful products, make the products themselves—often more cheaply, given their massive size—and then rank the product at the top of the search bar. In effect, they can make it impossible for you to compete on product quality or price.

We have a rare opportunity to improve this abuse of power. We should seize that opportunity with bipartisan support and help protect American consumers and businesses.

I yield the floor.

The PRESIDING OFFICER (Ms. SMITH). The Senator from Minnesota.

Ms. KLOBUCHAR. Madam President, I ask unanimous consent that I be permitted to speak up to 7 minutes; Senator MERKLEY, up to 15 minutes; and Senator DURBIN, up to 10 minutes prior to the scheduled votes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. KLOBUCHAR. Madam President, I want to thank my colleague Senator GRASSLEY, the Republican lead on this bill; Senator BLUMENTHAL, who has done so much work in the area of competition and protection of children; and Senator HIRONO, who came to the floor today; as well as our original cosponsors of this bill, with many more supporters out there. And that includes

Senator DURBIN, the Chair of the Judiciary Committee; Senator LINDSEY GRAHAM, the former chair; Senator KENNEDY; Senator CORY BOOKER; Senator JOSH HAWLEY, Senator LUMMIS; and Senator WARNER.

So, as we noted, as you heard the speakers today, this is a real-world problem. This isn’t something where the tech companies can say “just trust us, we’ve got this.”

I think anyone who heard the whistleblower a few weeks back in Commerce knows that is not true; or heard the parent I heard from last week, who told me that, as she tries to protect her kids, as she tries to find the right filter or to get them to stop clicking on a link or doing something that is going to expose them to bad content and bad accounts, she said she feels like it is a faucet that is on and it is overflowing in a sink, and she is trying to mop it up, and then the water just keeps coming out as she goes from kid to kid to kid.

I think that pretty much sums it up for how a lot of parents feel right now.

And the other thing that is going on when you have dominant platforms and you don’t have enough competition and you can’t get competitors that might have developed the bells and whistles that would have protected us from misinformation and from bad information for our kids—well, that is what happens when you have dominant platforms.

And you know what else happens to you when you go to search for restaurant reviews, you might not be able to see what you really want to see. Instead, you get pushed towards less reputable and less informative reviews; or when you go to try to book a flight, you might be missing out on a better deal because of certain dominant platforms’ own booking tool is being pushed to the top of your results. You are basically getting ripped off. That is it, plain and simple.

It also means a dominant platform using nonpublic data—nonpublic data, stuff it gathered from you. And, by the way, one example, Facebook makes \$51 a quarter—a quarter—off of every one of the pages that is sitting here in front of us, off of Senator MERKLEY, who is patiently waiting to speak. Fifty-one dollars a quarter is how much they make because they have got access to all this information, and then the ads get targeted to us. And we don’t get any of that money.

Dominant platforms, using nonpublic data that they gather from small businesses can use their platforms—and this is in the retail space; we are talking here, like, Amazon—to build knockoff copies of their products and then compete against the people who we are paying to advertise on their platform.

This isn’t your local grocery store chain selling store brand potato chips to compete with a brand-name product. This is Amazon using incredibly detailed, nonpublic information that they

get from their sellers on their platform to create copycat products and box out competition from small innovators.

What does it look like?

In one case, an employee of Amazon’s private label arm accessed a detailed sales report with 25 columns of information on a car trunk organizer produced by a small Brooklyn company called Fortem. In October 2019, Amazon started selling three trunk organizers of its own. When shown the collection data Amazon had gathered about his brand before launching of their own product, Fortem’s cofounder called it a big surprise.

Yeah, I don’t think most of us assume that trillion-dollar companies put their troves of data to work boxing small businesses out of the trunk organizer market. But it happened.

That is why we are here supporting the American Innovation and Choice Online Act.

Yeah, you have got to update your competition laws when they haven’t been changed since the internet was invented.

What does this mean?

Apple won’t be able to stifle competition by blocking other companies’ services from interoperating with their platform. Amazon won’t be able to misuse small businesses’ data in order to copy their products. And Google won’t be able to bias their platform’s search results in favor of other products—their own products.

The result?

A fairer playing field for small and medium businesses, more options, more flexibility, and more access to markets and fostering entrepreneurship for the new kids on the block.

And, by the way, as Senator GRASSLEY outlined, this bill does not outlaw Amazon Prime. Let’s go for the lie. It does not do that. That is what they have been saying because they want to stop this in its tracks; or free shipping; or stop Apple from freeloading useful apps onto their iPhones. No, no, no. This is the kind of stuff they have been saying for a while.

And that is why Senator GRASSLEY and I spent the entire summer working on this bill, to make sure it did none of that. That is why we have such broad support, because this is targeted at anti-competitive conduct.

We are really excited about this bill. The positive opinions it has been getting—Boston Globe, Washington Post: “Finally a promising piece of tech antitrust legislation in Congress.”

I think there are other ones, but that is what they said in there.

So commonsense rules of the road for major digital platforms, allowing them to continue to operate their businesses. We are glad for these products. We like these products. We want to keep these companies strong. But they don’t need to engage in this kind of behavior. That is why we are here today, and we are looking very forward to getting this bill before the Judiciary Committee and passed through the Senate.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

ISSUES FACING AMERICA

Mr. MERKLEY. Madam President, not too long ago, we had a vote on whether or not to start a debate on the John Lewis Voting Rights Act. And the majority said, yes, start the debate.

Then why aren't we here in that debate?

Well, the simple answer is we have a process whereby you have to have 60—a supermajority of the Senate decide to start a debate. In other words, there is ability to exercise a veto over whether or not a bill is worthy for consideration on this floor, even if it is supported by the majority of legislators.

That effort is really about destroying the ability of this Senate to address the big issues facing America.

What bigger issue is there in a Republic than stopping billionaires from buying elections; to stop gerrymandering from destroying equal representation; to stop State laws that create prejudicial barriers designed to target specific groups to keep them from voting; barriers at the ballot box to steal the right to vote? What bigger, more fundamental issues are there than that?

Yet we can't even start a debate. In fact, we spend a lot of time debating whether to debate, and that is wasted time on the floor.

So, truly, that vote we took was symbolic of two things. The first is that we are failing to address one of the biggest issues we face in this Nation: the integrity of our election system, the corruption of our election system.

And, second, that this Senate has become dysfunctional.

When Ben Franklin was walking out of the Constitutional Convention, he was asked by a woman what kind of government they had created—a Monarchy or a Republic? And he is reported to have responded: A Republic, if you can keep it.

We have strived through 234 years to keep that Republic through war, through depression, through social unrest, through global pandemic. We fought for 234 years to ensure that, as expressed by Lincoln at Gettysburg, "government of the people, by the people, for the people, shall not perish from the earth." But, as the American philosopher John Dewey once said, "Democracy has to be born anew every generation."

It is up to each generation to take up the cause and fight to protect the foundations of our Republic. We are facing a moment of crisis once again when this institution has veered far afield from that time when it was declared to be the world's greatest deliberative body. Now it is perhaps the world's most dysfunctional legislative body—unwilling and unable to even debate, let alone vote, on the biggest issue of our time: the defense of our Republic from the corrupting forces of power, of billionaires buying elections, of gerrymandering, and certainly of barriers at the ballot box.

mandering, and certainly of barriers at the ballot box.

So we have a responsibility to take up this cause, to understand its source, and to address it, to restore the Senate as a deliberative body.

One of the ways to evaluate our dysfunction is to look at the trend and number of amendments considered on the U.S. Senate floor.

In the 109th session of Congress, 2005 to 2007, there were 314 amendments. In the 116th, the 2 years just passed, there were 26. So 314 amendments to 26. And most of the amendments that were allowed of those 26 went to just 2 Members, so most Members had no opportunity to offer amendments.

The trends in cloture filings—that is a motion to close debate—give us some understanding of what has happened. They were extremely rare in the past because the Senate understood it was a simple majority body. That is the way the Founders designed it. So very rarely there had to be an effort to actually close debate because Members went on forever speaking, but it was rare—in 1910 through 1919, just three times; in 1930 through 1940, four times; and in 1950 to 1960, two times. But then, in 1970 forward, things changed. From 1970 to 1975, there were 57 filings to close debate in 4 years versus 34 from 1910 forward to 1970.

This explosion—and that was just on policy legislation—led to a reform in 1975. The rule for closing debate—the old rule of two-thirds of Senators voting was changed to three-fifths of Senators duly chosen or sworn. That is 60 votes regardless of how many people were on the floor voting.

That rule change was started, if you will—generated just in those years from 1970 to 1974 where you had these 57 cloture motions, which is nothing compared to today—nothing—which I will expand on.

But that 1975 rule change—because instead of saying it was a percentage of those present and voting, instead, it was a percentage of the Senate, it means that, unwittingly, we transformed the way that you delay things in order to exercise leverage.

We had, under the old rule, a public process where you had to take the floor as I am right now and speak at length in order to delay while your teammates worked to negotiate an amendment, negotiate a compromise, make sure the public had read the bill, make sure the press had seen the bill, make sure the Senators had vetted the bill. All those are valuable. That delay in order to improve the process is valuable.

Under the old rule, it was a public process. The whole Nation saw it, and they could judge whether you were a champion or whether you were a disaster, and you got that feedback. Under that old rule, it was not just a public process, but it took enormous energy.

Under the new rule—a no-show. It is not necessary to show up for debate and not necessary to show up to vote.

It is a no-show, no-effort veto that transformed this Senate. Well, the result was that it made it so easy to obstruct that people decided to obstruct a lot. That 1975 cloture rule backfired by creating this no-show, no-effort obstruction.

Let me give you a sense of this. During the period 1960 through 1970, there were some 25 cloture motions to close debate, but in the next decade, over 100 in the seventies; in the eighties, over 200; in the nineties, over 300; in the 2000s, over 400; and in 2010 through 2020, 1,029 motions to close debate. That is the disaster we are living in right now. Instead of it just being "Let's slow things down on final passage," it became "Let's slow things down on amendments." So we went from zero cloture motions on amendments from 1920 through 1960 to 143 just in one 10-year period. It expanded to nominations. We went from zero from 1910 through 1960 to 545 during 2010 through 2020. In motions to proceed to legislation, we went from zero during the fifties to 175 in 2010.

So this process of a supermajority vote to proceed expanded from being rare to being common. It expanded from being on final passage of legislation to everything—amendments, motions to proceed—every aspect of the work we do here.

Now, here is the very strange thing: This use of a supermajority would absolutely have astounded and appalled our Founders. Our Founders were operating under the Confederation Congress at the time they were writing the Constitution. The Confederation Congress had a requirement for a supermajority, and that supermajority paralyzed the Confederation Congress. They were not able to raise an army to put down Shays' Rebellion. They were not able to raise money to pay for the Revolutionary War veterans.

So our Founders said: Whatever you do, don't adopt a supermajority.

We have Hamilton writing:

If two thirds of the whole number of members had been required . . . the history of every political establishment in which this principle has prevailed, is a history of impotence, perplexity, and disorder.

Hamilton, in another Federalist paper, wrote:

If a pertinacious minority can control . . . [the] majority . . . tedious delays; continual negotiation and intrigue; contemptible compromises of the public good [will result].

Then we have Madison, who said:

In all cases where justice or the general good might require new laws . . . or active measures . . . the fundamental principle of free government would be reversed [under a supermajority]. It would be no longer the majority that would rule: the power would be transferred to the minority.

He is pointing out that it stands the very structure of a legislative body on its head.

He went on to note that the result of the supermajority—remember, they were experiencing this under the Confederation Congress—is to produce the

following: that the “minority might take advantage of it to screen themselves from equitable sacrifices to the general weal, or, in particular emergencies, to extort unreasonable indulgences.”

Here, are our Founders saying: We experienced the supermajority. Don’t ever do it.

They wrote the Constitution so a supermajority was reserved only for special circumstances, like evicting Members, like considering a treaty, like overruling a Presidential veto.

So why are we here today doing exactly what the Founders said not to do and experiencing exactly the results that they had experienced under the Confederation Congress?

My friends, we have a responsibility to restore the function of this body. We need to streamline the nomination process. Think about how a nomination works. You vote to go to executive session. You have a motion to proceed to a nomination. You vote on proceeding. You hold a debate, you hold a vote, and then you proceed it, and then you hold a debate, and then you vote, and then you have 2 hours of postdebate, and then finally a vote. That is a crazy system to be able to consider a nomination. It takes up huge amounts of our time when a simple vote to proceed, limited debate, simple vote to proceed to on the floor, simple time to consider it, and a vote on whether or not you are going to allow the person to fill the position the person has been nominated for—this sort of streamlining would save us all a tremendous amount of time that could be dedicated to actual debate and actual amendments.

Then there is this use of a supermajority on motions to proceed to legislation, using a blockade to prevent debate, not to facilitate debate, as is sometimes argued for the supermajority—that it can slow things down, facilitate debate, make sure bills are read, make sure there is a chance of negotiation—no, to prevent debate. We shouldn’t spend time debating whether to debate. Let’s just have a set hour to consider whether to move to a bill, and then we either move to it or we don’t.

How about amendments? I noted the collapse of the ability of Senators to amend. Senators in the minority want to do amendments. Senators in the majority want to do amendments. We all have ideas and thoughts on how to change things and improve things. We want to make our case, but we don’t get to do it here anymore.

Don’t we have a bipartisan, vested interest in restoring amendments to the deliberations of the Senate? You know, I was pondering this question because we seem to be locked in a cycle where, given partisan differences in the Nation—partisan differences that are increased by social media and increased by cable television—we just can’t seem to come together to be able to make this place work as it is supposed to, as it is our responsibility to do. But we

have gotten to the point where we are utterly—utterly—damaging the United States of America.

You know, the President of China, President Xi, is saying: Hey, there is a world competition between democratic republics and an authoritarian world. Look what we have done in China. We went from bicycles, and then we had cars and traffic jams, and now we have bullet trains, 16,000-mile bullet trains. Look what we are accomplishing. Look how many millions are lifted out of poverty. Look how paralyzed the United States is.

Why is the United States paralyzed? Because this Chamber cannot discuss a simple debate and vote like every State legislature across this country does.

Colleagues, let’s come together. Let’s restore debate. Let’s restore amendments. Let’s save and savor and improve the ability of the minority to participate in the process, but let’s also remember that balance of the Senate involves getting to a final decision, a simple majority vote as the Founders had intended.

The PRESIDING OFFICER. The Senator from Illinois.

NOMINATION OF JENNIFER SUNG

Mr. DURBIN. The Senate will soon be voting on a highly qualified nominee to the Ninth Circuit, Jennifer Sung.

She is a distinguished jurist who will bring an underrepresented perspective to the bench. She is a graduate of Oberlin and Yale Law School. She clerked for Judge Betty Binns Fletcher on the Ninth Circuit. She received a prestigious Skadden Fellowship and worked on economic legal issues at the Brennan Center. She spent more than a decade representing American workers, often minorities from low-income and underserved communities, in labor disputes.

In 2017, Oregon Governor Kate Brown appointed her to serve on the Oregon Employment Relations Board, known as the ERB. It is a three-member, quasi-judicial agency charged with resolving labor disputes. As a member of that board, she sits on a three-member panel that reviews evidentiary records, independently evaluates the law, and works in a collaborative manner to reach consensus on opinions and issues. If that sounds like the same process she would follow in Federal court, it is. In her nearly 5 years on that board, she has presided over more than 200 matters, and only 3 of the 200 have ever been overturned.

She has exhibited the kinds of qualities we expect of a circuit court nominee. She has been criticized for one thing that she did in her life, and some of her critics won’t forget it. She signed a letter that was opposed to Judge Kavanaugh’s nomination to the Supreme Court. She has testified under oath before our committee that some statements in that letter were, in fact, overheated. More importantly, she testified that she respects the authority of all members of the Supreme Court

and recognizes the importance of faithfully following law and precedent.

The best evidence of how she will serve on the circuit is her impressive record in the State of Oregon. When you look at that record, you see that she has the support not only of many colleagues but also of employees, unions, and employers. Here is what they said: “impressive intelligence, diligent preparation, respectful courtroom demeanor, and judicial impartiality.” How about that for a checklist for a judgeship?

When I hear some of my colleagues express outrage over one letter she signed in her life, I wonder if they remember some of the nominees that they brought before us in the last 4 years. It appears there is a double standard.

Ms. Sung has the strong support of Senators MERKLEY and WYDEN, and the American Bar Association rated her as “well qualified.” As the first Asian-American woman—she will be the first to hold the Oregon seat in the Ninth Circuit, bringing diversity to that bench. Her professional accomplishments and her commitment to fairness and impartiality are profound and impressive.

I support her, and I hope my colleagues will as well.

I yield the floor.

EXECUTIVE CALENDAR

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the Prieto nomination, which the clerk will report.

The legislative clerk read the nomination of Jeffrey M. Prieto, of California, to be an Assistant Administrator of the Environmental Protection Agency.

VOTE ON PRIETO NOMINATION

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the Prieto nomination?

Mr. DURBIN. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The senior assistant bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Georgia (Mr. WARNOCK) is necessarily absent.

Mr. THUNE. The following Senator is necessarily absent: the Senator from South Dakota (Mr. ROUNDS).

The result was announced—yeas 54, nays 44, as follows:

[Rollcall Vote No. 460 Ex.]

YEAS—54

Baldwin	Casey	Gillibrand
Bennet	Collins	Hagerty
Blumenthal	Coons	Hassan
Booker	Cortez Masto	Heinrich
Brown	Cramer	Hickenlooper
Cantwell	Duckworth	Hirono
Cardin	Durbin	Hyde-Smith
Carper	Feinstein	Kaine